IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/08/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.442 OF 1996

Sundara Raj .. Appellant

-Vs-

State
by Inspector of Police
Ambasamudram Police Station
(Cr. No.370 of 1993) .. Respondent

This criminal appeal is preferred under Section 374 of Cr.P.C.
against the judgment dated 13.6.1996 passed in S.C.No.428 of 1993 on the file of the learned II Additional Sessions Judge, Tirunelveli.

!For Appellant : Mr.D.Krishnan

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. Side)

:JUDGMENT

The sole accused, who stood charged, tried under Section 449 and 302 IPC, found guilty under Section 448 and 335 IPC and sentenced to undergo one year RI under Section 448 IPC and four years RI under Section 335 IPC has brought forth this appeal.
2. The short facts necessary for the disposal of this appeal can be stated as follows:
a) P.W.1 Vellammal and P.W.4 Isaki Padayachi are the mother and father of the deceased Esaki Muthu. On 19.7.1993, the deceased came from Bombay where he was working due to ill-health. P.Ws.1 and 4 took the deceased to P.W.8 Dr. Arunachalam for treatment and treatment was also given. The deceased was advised to take rest. On 30.7.1993 at about 1.30 p.m., P.W.1 and P.W.2 Seethaiyammal the relative of P.W.1 were chatting in front of the deceased house. P.W.7 Sathya Sai lakshmi, the wife of the accused was walking in the street in front of the deceased house. P.W.7 was a handicapped person. At that time, the deceased came out of the house and fell on P.W.7 due to staggering. P.w.7 was also fell down.
b) On coming to know the same, at about 1.45 p.m., the accused, the husband of P.W.7, rushed to the house of the deceased and stamped on the deceased and kicked him on his backside and ribs. The said incident was

witnessed by P.Ws.1 and 2. P.W.1 tried to prevent the same, but the accused pushed her down and the accused further asked the deceased to tender apology to P.W.7. The deceased became unconscious. On seeing the condition of the deceased, the accused ran away from the scene of occurrence.

c) Immediately, P.W.1 went to Kallidaikurichi where P.W.4 the husband of P.w.1 gone there and informed the same to P.W.4. They returned to the house. A Taxi was brought and the deceased was taken to the Government Hospital, Ambasamudram, where P.W.10 Dr.Abdul Kareem on examination the deceased declared him dead. P.W.10 intimated the same to the Ambasamudram Police Statin under Ex.P.7 intimation. P.W.14 Madhavan Pillai Sub Inspector of Police on receipt of intimation, went to the hospital and recorded the statement of P.W.1. On the strength of which, he registered a case in Crime No.370 of 1993 under Sections 448 and 302 IPC. Ex.P.9 express printed F.I.R. was despatched to the concerned Judicial Magistrate Court and the copies were sent to higher officials. P.W.15 Chidambaram Inspector of Police on receipt of copy of F.I.R., took up investigation, proceeded to the site of occurrence at about 7.00 p.m. and prepared Ex.P.2 observation mahazar and rough sketch Ex.P.11. He recovered M.O.1 Dhothi and MO2 Mat under Ex.P.3 mahazar in front of P.W.5 Kandappan and one Mani. He examined the witnesses and recorded their statements. P.W.15 proceeded to the Government Hospital, Ambasamudram and examined P.W.1 to P.W.3 and recorded their statements. He conducted inquest on the body of the deceased from 10.00 p.m. to 11.00 p.m. in front of the panchayatdars and witnesses and prepared Ex.P.12 inquest report.

d) On requisition made by the Investigating Officer, P.W.9 Dr. Neelakandan attached to the Government Hospital conducted autopsy on the dead body of the deceased. He issued Ex.P.6 Post-mortem certificate. P.W.9 opined that the deceased would appear to have died of shock and haemorrhage due to injury to spleen. The Investigating Officer arrested the accused on 31.7.1993 and send him for judicial custody. P.W.15 examined P.Ws.9 and 10. A requisition was given to the Court to send all the M.Os. for chemical analysis. The chemical analyst report was also received. On completion of the investigation, P.W.15 filed a charge sheet against the accused under Section 302 IPC.

3. In order to prove the case levelled against the accused/ appellant, the prosecution examined 15 witnesses and marked 12 exhibits and 4 M.Os. On completion of the evidence of the prosecution, the accused was questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which he flatly denied as false. No defence witness was examined and no material was also marked on the side of the defence. On consideration of the rival submissions made and scrutiny of the materials available, the trial court has found the accused guilty under Section 448 and 335 IPC and awarded punishment as referred to above. Aggrieved appellant has brought forth this appeal.

4. Mr.D.Krishnan, the learned counsel appearing for the appellant inter-alia made the following submissions:

The lower court without any evidence whatsoever has found the appellant guilty under Section 448 and 335 IPC. The lower court has disbelieved the case of the prosecution, but it has recorded conviction that the accused was found guilty under Sections 448 and 335 IPC. From the available evidence, it would be clear that the deceased attempted to outrage the modesty of P.W.7, the handicapped lady and the public, who gathered there,

have beaten him and the same would cause the rupture of spleen, which resulted in his death. It is pertinent to point out that the post-mortem Doctor has not noticed any external injury. This would indicate that by the act alleged to have been committed by the appellant, the rupture of spleen could not have happened. P.W.2 was an interested witness and the whole evidence was tissue of falsehood and hence, the lower court should have rejected the evidence. At that time, on coming to know that the deceased attempted to outrage the modesty of P.W.7 by embracing in a public place, what were all done by the appellant was that he went to the house of the deceased and asked him to tender apology to P.W.7. But, it was the public who attacked him, which has resulted in his death. The trial court has not considered the admission made by P.W.2 that when P.W.2 went to the Police Station, P.W.1's son-in-law, Head constable and the Tahsildar were there. When the case came before the Court, it was one different from the F.I.R. It was the case where the medical evidence has not corroborated the ocular testimony, and hence, the lower court instead of rejecting the case of the prosecution, has found the accused guilty under Sections 448 and 335 IPC. Hence, the appellant is entitled for an acquittal in the hands of this Court.

5. Strongly opposing all the contentions put forth by the appellant's side, Mr.V.Jaya Prakash Narayan, the learned Government Advocate would submit that on the day of occurrence, the deceased was not doing well. When he came out of his house, at the time of occurrence, he fell on P.W.7 due to staggering. But, P.W.7 informed her husband as if it was the matter of outrage of her modesty and within the short time, the appellant came to the house of the deceased and made illegal entry. The accused kicked him on his backside and ribs. The same was witnessed by P.Ws.1 and 2. When the deceased was taken to hospital, he was declared dead. Hence, the dead was caused only due to the act committed by the appellant. Taking into consideration the facts and circumstances of the case, the trial court found him guilty under Sections 448 and 335 IPC and has taken a lenient view, and hence, the judgment of the lower court has got to be affirmed.

6. This Court paid its full attention on the submissions made and made a close scrutiny of the materials available.

7. The gist of the prosecution case as could be seen above was that on the day of occurrence, P.W.7, who was an handicapped lady, was proceeding from her office to her residence for lunch. At about 1.30 p. m., the deceased came out of his house and fell on her due to staggering. But, P.W.7 took it as one that her modesty was outraged. She informed her husband about the same. He rushed over to the house of P.W.1 within 15 minutes and kicked the deceased on different parts of his body, which caused the death of the deceased. P.W.7 though turned hostile, has clearly spoken to the fact that at the time of occurrence, she was proceeding in the street and the deceased came out of the house and embraced her. On seeing the same, P.W.1 took him inside the house. P.Ws.1 and 2 have clearly spoken to the fact that within the short time therefrom, the appellant came from his house and got entry into the house of the deceased and stamped and kicked the deceased on his backside and on his ribs also. From the evidence, it would be clear that the deceased was working in Bombay and due to illness, he came to his place. He also underwent treatment. When P.Ws.1 and 2 took the deceased to the hospital, he was declared dead. Then, on their complaint, a case came to be registered and was investigated.

8. What was contended by the appellant/accused before the court below and equally here also is that the deceased attempted to outrage the modesty of P.W.7, an handicapped lady and on coming to know about the same, due to sudden provocation, the appellant went to the house of P.Ws. and questioned the same. He further asked the deceased to tender apology to his wife, but, he did not attack him at all. In order to support his contention, the learned counsel for the appellant took the court through the evidence of P.W.9, the post-mortem Doctor and the post-mortem certificate Ex.P.6. P.W.9 has categorically deposed that there was no external injury found. Relying on this part of the evidence, the learned counsel for the appellant would stress that since there was no external injury found, the theory of the prosecution that the appellant kicked the deceased with his legs was false. Subsequently, P.W.1 has introduced that the appellant was wearing boots at that time, but it was not found either in the complaint or in the statement recorded by the police under Section 161 Cr.P.C. Added further the learned counsel that it was the public, who attacked the deceased even before the appellant came to the house of the deceased, and hence, the prosecution story was false. The Court is unable to agree with the said contention for the simple reason that on the day of occurrence, the said incident took place in a public street according to the evidence of P.W.7. It is also an admitted fact that the appellant on coming to know about the incident from P.W.7 came to the house of the deceased. There is no material to accept the contention of the appellant that the deceased was attacked by the public on that day. P.Ws.1 and 2 have clearly spoken to the fact that the deceased was kicked by the appellant. It is true that the Post-mortem Doctor has deposed that there was no external injury found. But, he has deposed that the spleen was found ruptured. The deceased had a disease in which it would have already been damaged and a kick in the ordinary course of event was possible to cause rupture to the spleen and was sufficient to cause death. From the available evidence, it would be clear that the accused/appellant kicked the deceased and the said act was neither intentional to cause death nor with the knowledge that it was likely to cause death under the circumstances. It is true that the death was caused. From the Doctor's evidence, no external injury was found.

9. Taking into consideration the cumulative facts and circumstances of the case, the Court is of the view that this is a fit case for punishing him under Section 323 of IPC, since the appellant came over to the house of P.Ws. to question the conduct of the deceased. Therefore, instead of Section 335 IPC, the accused is convicted and sentenced to undergo six months RI with a fine of Rs.500/- in default one month SI under Section 323 IPC. Insofar as Section 448 IPC is concerned, the accused entered into the house of the deceased and it cannot be said to be an unlawful entry, and hence, the finding of the lower court that the accused was found guilty under Section 448 IPC has got to be set aside.

10. In the result, the conviction and sentence under Section 448 IPC imposed by the lower court to the accused is set aside and the accused is acquitted of the charge under Section 448 IPC. The lower court has convicted and sentenced the accused under Section 335 IPC and the same is modified . Instead of Section 335 IPC, the accused is convicted under Section 323 IPC and sentenced to undergo six months RI with a fine of Rs.500/- in default one month SI. With the above modification, the criminal appeal is partly allowed. The Sessions Judge shall take steps to commit the accused to prison, if he is

on bail, to undergo the remaining period of sentence.

Index : Yes
Internet : Yes
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To
1. The Judicial Magistrate, Ambasamudram
2. The Judicial Magistrate, Ambasamudram
through the Chief Judicial Magistrate, Tirunelveli
3. The II Addl. Sessions Judge, Tiruneveli
4. The II Addl. Sessions Judge, Tiruneveli
through the Sessions Judge, Tirunelveli
5. The Superintendent, Central Prison, Tirunelveli
6. The Public Prosecutor, High Court, Madras
7. The Dy. Inspector General of Police, Chennai-4
8. Mr.V.Jaya Prakash Narayan, Govt. Advocate (Crl. Side)
High Court, Chennai
9. The Inspector of Police, Ambasamudram Police Station